

Applicant : Richard S. Ginn
Appl. No. : 10/773,508
Examiner : Ann M. Schillinger
Docket No. : 15457.4018

REMARKS

The Office Action dated November 14, 2006 has been carefully considered. The specification has been amended at page 14, line 24 to correct the numeral designation "42" by substituting the designation "44". The drawings and the specification are now consistent and it is believed that no correction of the drawings is required.

Claim 3, now cancelled, has been rejected as indefinite because, in the Examiner's view, there was no antecedent in the claim for the "accessing" and "wrapping" steps. Claim 3 has now been incorporated into claim 1 and, presumably, the same rejection would be made. Thus, applicant respectfully points out that there is antecedent in claim 1 which recites both an "accessing" and a "wrapping" step. Thus, there appears to be clear antecedent for the recitations in claim 3 which is now incorporated into claim 1. Thus, applicant believes this rejection to be in error. If the Examiner continues to believe otherwise, applicant respectfully request an explanation of the reasons for this rejection.

Claims 1-4 and 9-16 have been rejected as anticipated by Kuslich Patent No. 6,712,853. Applicant has amended claim 1 to incorporate the recitations of claim 3. With this amendment, which adds the steps of extending a distal end of an elongate member, connecting a first end of the band to a distal end of the elongate member, pulling the elongate member back around the posterior region of the disc and securing at least one of the first end and a second end of the band to another portion of the band thereby securing the band around the disc, all of the claims in this application are clearly patentable over Kuslich. The Examiner suggests that member 52 as shown in Figure 8 of Kuslich is comparable to the elongated member of applicant. This is not so. Element 52 is simply a tubular housing for the band 12 and is not an elongate member attached to one end of the band for pulling it around a disc as recited in claim 1, as amended. Thus, it is believed that claims 1-4 and 9-16 are plainly not anticipated by Kuslich.

Claims 17 and 18 have been rejected as unpatentable over Kuslich. However, as noted above, Kuslich does not disclose an elongate member for grasping one end of the band and thus does not disclose the invention recited in these claims either.

Claims 5 and 6 have been rejected as unpatentable over Kuslich in view of Schneiderman Publication No. 2003/0032965. Schneiderman does disclose a fork member, but it is used in a manner which is entirely distinct from the manner recited in claims 5 and 6. Schneiderman's fork

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manipulates the process portion of the vertebra whereas the fork recited in the present claims surrounds the disc with its heels 44 resting on a vertebra. The use of these forks is completely different. Thus, it is believed that claims 5 and 6 are clearly patentable over Kuslich in view of Schneiderman.

Claims 7 and 8 have been rejected as unpatentable over Kuslich in view of Belef Publication No. 2002/0147497. Applicant acknowledges that Belef teaches the use of extra-cellular matrix material as a fill material. However, Belef does not remedy any of the deficiencies of Kuslich which have been noted above. Thus, claims 7 and 8 are believed to be patentable for the same reasons as claim 1.

It is believed that the claims of this application are now in condition for allowance and a favorable action is respectfully solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

The Commissioner is authorized to charge the three month extension fee of \$510.00 and any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

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By: 
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